

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

PART 120—PURPOSE AND DEFINITIONS

- Sec.
- 120.1 General authorities and eligibility.
 - 120.2 Designation of defense articles and defense services.
 - 120.3 Policy on designating and determining defense articles and services.
 - 120.4 Commodity jurisdiction.
 - 120.5 Relation to regulations of other agencies.
 - 120.6 Defense article.
 - 120.7 Significant military equipment.
 - 120.8 Major defense equipment.
 - 120.9 Defense service.
 - 120.10 Technical data.
 - 120.11 Public domain.
 - 120.12 Directorate of Defense Trade Controls.
 - 120.13 United States.
 - 120.14 Person.
 - 120.15 U.S. person.
 - 120.16 Foreign person.
 - 120.17 Export.
 - 120.18 Temporary import.
 - 120.19 Reexport or retransfer.
 - 120.20 License.
 - 120.21 Manufacturing license agreement.
 - 120.22 Technical assistance agreement.
 - 120.23 Distribution agreement.
 - 120.24 Port Directors.
 - 120.25 Empowered Official.
 - 120.26 Presiding Official.
 - 120.27 U.S. criminal statutes.
 - 120.28 Listing of forms referred to in this subchapter.
 - 120.29 Missile Technology Control Regime.
 - 120.30 The Automated Export System (AES).
 - 120.31 North Atlantic Treaty Organization.
 - 120.32 Major non-NATO ally.

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SOURCE: 58 FR 39283, July 22, 1993, unless otherwise noted.

§ 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense

articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. This subchapter implements that authority. By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary for Defense Trade Controls and Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs.

(b)(1) *Authorized officials.* All authorities conferred upon the Deputy Assistant Secretary for Defense Trade Controls or the Managing Director of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for Arms Control and International Security or the Assistant Secretary of State for Political-Military Affairs unless the Legal Adviser or the Assistant Legal Adviser for Political-Military Affairs of the Department of State determines that any specific exercise of this authority under this paragraph may be inappropriate.

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD—Defense Trade Controls). The DAS—Defense Trade Controls and the MD—Defense Trade Controls are responsible for exercising the authorities conferred under this subchapter. The DAS—Defense Trade Controls is responsible for oversight of the defense trade controls function. The MD—Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) The Office of Defense Trade Controls Management and the Director, Office of Defense Trade Controls Management, which have responsibilities related to management of defense trade controls operations, to include the exercise of general authorities in this part 120, and the design, development,

Department of State

§ 120.3

and refinement of processes, activities, and functional tools for the export licensing regime and to effect export compliance/enforcement activities;

(ii) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, which have responsibilities related to licensing or other authorization of defense trade, including references under parts 120, 123, 124, 125, 126, 129 and 130 of this subchapter;

(iii) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance therewith, including references contained in parts 122, 126, 127, 128 and 130 of this subchapter, and that portion under part 129 of this subchapter pertaining to registration;

(iv) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, which have responsibilities related to the general policies of defense trade, including references under this part 120 and part 126 of this subchapter, and the commodity jurisdiction procedure under this subchapter, including under this part 120.

(c) *Eligibility.* Only U.S. persons (as defined in §120.15) and foreign governmental entities in the United States may be granted licenses or other approvals (other than retransfer approvals sought pursuant to this subchapter). Foreign persons (as defined in §120.16) other than governments are not eligible. U.S. persons who have been convicted of violating the criminal statutes enumerated in §120.27, who have been debarred pursuant to part 127 or 128 of this subchapter, who are the subject of an indictment involving the criminal statutes enumerated in §120.27, who are ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government, who are subject to Department of State Suspension/Revocation under §126.7(a)(1) through (a)(7) of this subchapter, or who are ineligible

under §127.7(c) of this subchapter are generally ineligible. Applications for licenses or other approvals will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter. All applications and requests for approval must be signed by a U.S. person who has been empowered by the registrant to sign such documents.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter or any party to the export (as defined in §126.7(e) of this subchapter) is generally ineligible as set forth above in paragraph (c) of this section, unless an exception has been granted pursuant to §126.7(c) of this subchapter.

[58 FR 39283, July 22, 1993, as amended at 68 FR 7417, Feb. 14, 2003; 68 FR 51171, Aug. 26, 2003; 68 FR 57352, Oct. 3, 2003; 70 FR 34653, June 15, 2005; 71 FR 20536, Apr. 21, 2006]

§ 120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and defense services for purposes of this subchapter. The items so designated constitute the United States Munitions List and are specified in part 121 of this subchapter. Such designations are made by the Department of State with the concurrence of the Department of Defense. For a determination on whether a particular item is included on the U.S. Munitions List see §120.4(a).

§ 120.3 Policy on designating and determining defense articles and services.

An article or service may be designated or determined in the future to be a defense article (see §120.6) or defense service (see §120.9) if it:

(a) Is specifically designed, developed, configured, adapted, or modified for a military application, and

(i) Does not have predominant civil applications, and

(ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications; or